

PROCEDURE

CONTRACT ASSIGNMENT OR NOVATION

CAM 3.7.4

DATE: 9/24/99

**A. PURPOSE:**

Describes the requirements and procedures necessary to recognize a successor in interests when a supplier's assets are transferred, or when a legal change of name of the Supplier occurs.

**B. DEFINITIONS:** See Glossary Section for definitions. Any definitions included here are for purposes of this procedure only.

1. **Assignment:** A transfer by the original supplier (assignor) to a new supplier (assignee) of all or part of the original supplier's rights and/or obligations to a contract. The original supplier remains liable under the contract.
2. **Change-Of-Name Agreement:** A legal instrument executed by the supplier and the State that recognizes only a legal change of name of the supplier (not a change in ownership as a result of, e.g., a sale or merger) without disturbing the original contractual rights and obligations of the parties.
3. **Novation:** A bilateral or tripartite agreement between the original supplier with whom the State has a contract, the new supplier whom the State and/or the supplier wishes to take over the contract and the State, which, among other things, relieves the original supplier of all performance obligations under the contract, the new supplier assumes all obligations under the contract, and the State recognizes the novation/transfer of the contract and all related assets. Generally, following execution of the novation agreement, the original supplier does not remain liable under the contract. A novation is usually required when the original supplier firm is bought, splits its parts into independent businesses, merges with another firm or when a firm's assets are distributed as the result of a bankruptcy or dissolution of a business.
4. **Successor in Interest:** A party to a contract that was not an original contracting party, as a result of an assignment or novation.

**C. PROCEDURE:**

1. The documentation connected with an Assignment or Novation (including a Change of Name Agreement) is necessary to protect the interest of the State. The recognition of a successor in interest is discretionary on the part of the State depending upon whether recognizing a successor is in the State's best interest. If it is not in the State's best interest to recognize the transfer, the original supplier remains contractually obligated to the State and its failure to perform could result in the termination of the contract for default, see CAM 3.7.7, Contract Termination.
2. A Change of Name Agreement, recognizes only the legal change of name of the supplier without disturbing the original contractual rights and obligations of the State and the supplier.

3. When processing an assignment or novation refer to CAM 3.7.2, Contract Changes, for additional information.
4. Processing an Assignment. An assignment will occur when a request for an action is received from the supplier. Assignments can be of the whole contract, a portion of a contract (e.g., one or more payments be made to someone other than the original supplier or the remaining portion of a partially performed contract). The request should identify all necessary information to allow processing of the request, such as those things (e.g., payments or duties) that are to be assigned, to whom they are assigned and the effective date of the assignment. See CAM 3.7.9, Payments to Suppliers. The contract change or amendment shall be analyzed, documented and approved in accordance with established procedures. See CAM 3.7.2, Contract Changes.
5. Processing a Novation. When a novation agreement is required and the buyer has been notified by either the State agency associated with the contract or the supplier itself, the following actions must be taken:
  - a. The buyer, with the assistance of the State agency associated with the contract, shall make the determination whether to recognize a successor in interest to a State contract, assuring that the State will obtain the benefits from the contract as originally contemplated. Such determination should include an analysis of the financial responsibility of the successor in interest per CAM 3.5.4, Assessing Supplier Responsiveness and Responsibility, and that the State is still getting the benefit that was bargained for in the original contract (see also CAM 3.5.5, Price/Cost Analysis). The buyer shall not execute a novation agreement involving suppliers that are debarred or proposed for debarment, prior to obtaining the advice of Legal Counsel.
  - b. The buyer executes a Novation Agreement by making a contract change or amendment. See CAM 3.7.2, Contract Changes. If any payment is owed to the original supplier, the date on which the novation will become effective may have to be adjusted or a special provision included in the contract change specifying how any final payment to the original supplier will be accomplished. See CAM 3.7.9, Payments to Suppliers. If the original supplier is no longer a legal entity to which the State can pay, the contract language may include a provision that the State will pay the successor in interest who will in turn satisfy any outstanding obligations of the original supplier. In this case it is helpful if a party representing the original supplier signs the change and the change includes language that the original supplier waives all claims against the State.
6. Novations and assignments must be processed promptly so timely payments to suppliers are not jeopardized. See CAM 3.7.9, Payments to Suppliers.

#### **D. RESPONSIBILITIES:**

1. Determine that the requested contract change is in the best interests of the State.
2. Document all actions and analysis done to support the determination that a contract change should be done.
3. Prepare an amendment to the contract (see CAM 3.7.2, Contract Changes).

**E. APPENDICES:** None.

**F. AUTHORITY AND REFERENCES:**

1. Statutory: None.

2. Administrative: None.

3. Procedural: [CAM 3.5.4, Assessing Supplier Responsiveness and Responsibility](#)

CAM 3.5.5, Price/Cost Analysis

[CAM 3.7.2, Contract Changes](#)

CAM 3.7.7, Contract Termination

[CAM 3.7.9, Payments to Suppliers](#)

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